

HIGH COURT OF AZAD JAMMU & KASHMIR

Civil Revision No.356/2023.
Date of institution 120.07.2023.
Date of decision 25.04.2024.

Nazia Khalid D/o Sardar Muhammad Khalid Khan W/o
Muhammad Naeem Ejaz, caste Dooli R/o Serairi Tehsil
Hajira District Poonch.

....Appellant

VERSUS

1. National Database and Registration Authority (NADRA) through representative NADR having his office at Poonch Rawalakot.
2. Public at large of Mozia Serari Tehsil Hajira District Poonch.

....Respondents

CIVIL REVISION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Sardar Abdul Sami Khan, Advocate for the petitioner.
Khurshid Ahmed Malik, representative of NADRA.

Judgment:-

The captioned revision has been directed against the judgment and decrees passed by Additional District Judge Hajira dated 23.06.2023 as well as judgment and decree passed by Civil Judge Hajira dated 28.07.2022.

Summarized facts necessary for disposal of the titled revision are that the plaintiff/appellant filed a declaratory suit before Civil Judge, Hajira against the defendants alleging therein that her date of birth according to school record is 05.05.1986, whereas, the defendant No.1 entered the date of birth of the plaintiff on her identity

card as 14.04.1983, which is incorrect, inoperative and ineffective against the rights of the plaintiff and liable to be set at naught. The plaintiff averred that date of birth of her big brother is entered in NADRA record as 07.04.1983, thus, a gap between the date of birth of plaintiff and his brother is only seven days, which is unnatural and incorrect. While the correct date of birth of plaintiff is 05.05.1986, therefore, the plaintiff prayed that the defendant No.1 may be ordered to correct the date of birth of plaintiff, hence, prayed for issuance of a decree against the defendant No.1.

On filing of the suit, defendants were summoned, defendant No.1 appeared before the trial Court and submitted written statement wherein the claim of the plaintiff was negated and contended that identity card was issued to the plaintiff according to given information as well as documents provided to the defendant on behalf of plaintiff. Data Form was accepted by the plaintiff by putting signature as well as she fixed thumb impression upon the said Data Form. The defendant further contended that the plaintiff has no cause of action as well as suit of the plaintiff is barred by time, thus, the same is liable to be dismissed.

In light of the pleadings of the parties, four issues were framed by the learned trial court. After framing

of issues, plaintiff was directed to produce evidence in support of her claim. She produced three witnesses got recorded their statements alongwith her own statement before the trial Court. In support of her claim she also produced a verification of date of birth (Exh.PA) issued from Girls High School Kai Dharra, Serari. After evidence of plaintiff, defendant was directed to produce evidence but representative of NADRA refused to produce any evidence.

The learned trial Court after hearing arguments, vide judgment and decree dated 28.07.2022 dismissed the suit for want of cause of action, want of proof as well as being barred by law. Feeling aggrieved, the plaintiff/appellant filed an appeal before Additional District Judge, Hajira, who after hearing arguments of the parties, dismissed the appeal and maintained the judgment and decree of the trial Court vide impugned judgment and decree dated 23.06.2023, hence, this revision petition.

I have heard the learned counsel for the petitioner and considered the written arguments submitted on behalf of the respondent No.1 as well as gone through the record of the case with utmost care.

The claim of the plaintiff in a declaratory suit filed before Civil Judge Hajira was that her correct date of birth in light of school record was 05.05.1986, while, NADRA/defendant/respondent No.1 entered her date of

birth while issuing identity card as 14.04.1983. She prayed for correction of the same through a suit and sought decree against the defendant. Both the courts below have not accepted the claim of the plaintiff and dismissed the suit being barred by time/barred by law as well as for want of proof and cause of action vide impugned judgment and decrees.

Counsel for the petitioner prayed that the impugned judgment and decrees passed by the court below are liable to be set aside as the appellant proved her case through documentary and oral evidence before the court below but the evidence as well as law on the matter has been overlooked by both the Courts below. Petitioner claims that she is legally entitled to get correction of her date of birth of identity card issued by NADRA. She produced verification / document issued from a Govt. Girls Higher Secondary School Kai Dharra, Serari, Tehsil Hajira, District Poonch, in which her date of birth was entered as 05.05.1986.

An application for registration and getting any change incorporated in a card may be made before NADRA at any time, as by regulating National Database and Registration Authority (Application for National Identity Card) Regulations, 2002 framed in light of the National Database and Registration Authority Ordinance,

2000 (VIII of 2000) and under Rule 11 of the aforesaid rules a complete mechanism has been provided pertaining to preferring an application for registration viz a viz in rule 11 (e) it has clearly been mentioned that an application for getting any change incorporated in a card may be made at any time. It is useful to reproduce rule 11 (e) of NADRA (Application for National Identity Card) Regulations, 2002 as infra:-

11. Time for making application: (1)

 (a)
 (b)
 (c)
 (d)
(e) an application for getting any change incorporated in a card may be made at any time.

Thus, it is unequivocally reflecting from the above rule that no specific time line has been indicated by the said rule by preferring an application for any sort of change in the Identity Card and such application can be preferred at any time. So, in this view of the matter, findings of both the courts below are not in accordance with law and it depicts from perusal of the impugned judgments that the trial Court as well as 1st appellate Court have not dealt with the matter in accordance with the scheme of relevant rules and brushed aside the rule 11 (e)

of the special law by declaring that the suit filed by the petitioner/plaintiff as time barred.

National Database Registration Authority Ordinance is a special law having overriding effect as postulated in section **48** of the said Ordinance. It is useful to reproduce the same as infra;

48. The provision of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being enforced.

In Section 44, rules making powers qua carrying out the purposes of aforesaid ordinance have been given.

Self-assumed limitation could not be placed as a barrier by the subordinate Courts for the purpose of seeking change of date of birth in the identity card, supra mentioned rules are clear enough in this regard. Findings of the Courts below are superfluous, militates the scheme of rules, hence not sustainable.

Claim of the petitioner is simply pertaining to change of date of birth by way of asking for insertion of her correct date of birth. The petitioner is neither in service nor she is claiming any job, service rights or for that matter trying to take advantage of the same, resultant of which rights of any other person/ party are likely to be infringed. Civil Court as being court of ultimate jurisdiction is blessed

with vast powers to address and redress the grievance projected, if proved in accordance with law on the yardstick of doctrine of ubi jus ibi remedium.

(Emphasize supplied)

There appears no provision in National Database and Registration Authority Ordinance, 2000 that prohibits NADRA from rectifying any mistake in the CNIC.¹

The petitioner has involved the extraordinary revisional jurisdiction conferred under Section 115 of CPC instead of filing regular appeal and asked for reversal of the concurrent findings of fact.

I have to gauge the maintainability of the revision petition on the touch stone of Section 115 CPC. It is useful to reproduce Section 115 CPC as infra:-

Sec. 115--- Revision[(1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears –

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have acted in the exercise of its jurisdiction illegally or with material irregularity.
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit].

[Provided that, where a person makes an application under this sub-section, he shall, in support of such application, furnish copies of the pleadings, documents and order of the subordinate Court and the High Court shall, except for reasons to be recorded, dispose of such application without calling for the record of the subordinate Court.]

¹. Imran Khan vs. Federation of Pakistan 2016 YLR 323.

Provided further that such application shall be made within ninety days of the decision of the subordinate Court “which shall provide a copy of such decision within three days thereof and the High Court shall dispose of such application within six months”]

[(2) The District Court may exercise the powers conferred on the High Court by subsection (1) in respect of any case decided by a Court subordinate to such District Court in which an appeal lies and the amount or value of the subject matter whereof does not exceed the limits of the appellate jurisdiction of the District Court.

(3) If any application under subsection (1) in respect of a case within the competence of the District Court has been made either to the High Court or the District Court, no further such application shall be made to either of them.

(4) No proceedings in revision shall be entertained by the High Court against an order made under subsection (2) by the District Court.]

In my estimation and considered view that where concurrent findings are based on conjectural presumptions, against the clear cut scheme of law erroneous assumptions or for that matter misconception of law non-consideration of material evidence that can be reversed justifiably by High Court while exercising revisional jurisdiction as conferred upon it under Section 115, CPC and findings can be set at naught.

(Emphasize supplied)

Interference may be made in concurrent findings on patent error of law, consideration an inadmissible evidence, excess or abuse of jurisdiction and revision is competent.²

As both the courts below misconstrued the law qua applying self-assumed limitation instead of following the

². Abdul Sattar vs. Anab bibi PLD 2007 SC 609.

- (i) Major Rasheed Beg vs. Rehmat Ullah PLD 2001 SC 443.
- (ii) Karamat Hussain vs. Muhammad Zaman PLD 1987 SC 139.
- (iii) Saheb Khan vs. Muhammad Pannah PLD 1994 SC 162.
- (iv) Mohammad Bakhsh vs. Province of Punjab 1994 SCMR 1836.

roadmap indicated in the rules made under the special law as well as non-consideration of evidence and erroneous assumption facts are suffice to interfere and overturn the concurrent findings recorded by both the Courts below. Particularly, when maintainability of the revision has been questioned and disputed by other party.

So far as findings upon issue No.2 are concerned, same are also not correct and supported by the record. The petitioner/appellant amicably proved her stance through cogent oral and documentary evidence (verification) given by Principal Govt. Girls Higher Secondary School Kai Dharra, Serari, Tehsil Hajira, District Poonch. Thus, in this view of the matter, the impugned judgment and decrees are not sustainable and liable to be set aside.

Crux of above, instant revision petition is accepted, both the impugned judgment and decrees are hereby set at naught and suit filed by the plaintiff/petitioner is hereby decreed as prayed for. Petition accepted. File shall be consigned to record.

Announced.

Muzaffarabad.
25.04.2024.

JUDGE

Approved for reporting

JUDGE